

December 6, 2002

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW.  
Room TW-A325  
Washington, DC 20544

**RE: Proposed Rules: *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991* [CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250; 67 FR 62667, October 8, 2002]**

Dear Secretary Dortch:

The American Association of Blood Banks (AABB) appreciates this opportunity to provide public comment on the Federal Communication Commission's (FCC) proposal: *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991* (proposal or proposed TCPA rule)

The AABB is the professional society for over 8,000 individuals involved in blood banking and transfusion medicine and represents approximately 2,000 institutional members, including blood collection centers, hospital-based blood banks, and transfusion services as they collect, process, distribute, and transfuse blood and blood components and hematopoietic stem cells. Our members are responsible for virtually all of the blood collected and more than 80 percent of the blood transfused in this country. For over 50 years, the AABB's highest priority has been to maintain and enhance the safety and availability of the nation's blood supply.

**The FCC Proposal**

The AABB is extremely interested in this FCC proposal. AABB members routinely contact volunteer unremunerated donors to request that they donate blood and to let repeat donors know that they are now eligible to donate blood again. Such telerecruitment is a major part of the effort to provide blood, an integral part of medical treatment, and should not be confused with telemarketing. The elements of the FCC proposal that may impact the AABB includes suggestions that the FCC:

*“refine... existing rules on the use of autodialers, prerecorded messages, and unsolicited facsimile advertisements...and... reconsider the option of establishing a national do-not-call list...”* [62668 - Synopsis of NPRM]

Although the FCC is seeking information on a number of topics, this letter emphasizes responding to the requests for comments on:

1. *“...practices used to market goods and services over the telephone and facsimile machine...[and requests comments on]...those entities not covered by the FTC’s proposed national do-not-call data base...”* [62668 – Synopsis of NPRM]
2. *“...what, if any legitimate business or commercial speech interest is promoted by these calls.”* [62669 – TCPA Rules – Company-Specific Do-Not Call Lists] and
3. *“...calls made jointly by nonprofit and for-profit organizations and whether they should be exempt from the restrictions on telephone solicitations and prerecorded messages.”* [62673 – Tax Exempt Nonprofit Organizations]

## **AABB Response**

In response to the request for comments noted above:

1. Communications to request blood donations are **not** performed in order *“to market goods and services over the telephone....”* Rather, these calls are made to request donation of human blood and blood components to help patients in need. The AABB believes that its members, as non profit entities, are not subject to the Federal Trade Commission (FTC) rulemaking, and the blood banking community has requested clarification that the non-profit exclusion will be extended to for-profit telemarketing firms soliciting blood donors on our members’ behalf. The AABB urges the FCC to avoid attempting to fill this perceived gap.
2. Reaching out to the potential donor population to ask them to give this lifesaving gift certainly constitutes a *“legitimate business or commercial speech interest”*.
3. Use of for-profit telemarketers is sometimes crucial to our ability to maintain an adequate blood supply.

The AABB strongly urges the FCC to clarify that it will not subject telephone solicitations for blood, tissue, or other biologic material donations to a final rule.

## **The Blood Supply**

Voluntarily donated units of whole blood are processed into specific components such as red blood cells and platelets, which are distributed to thousands of hospitals and other health care providers in the United States. Each donation is used to treat up to three or more people including patients who suffer from a range of serious conditions such as cancer, trauma, or who need to undergo surgery. Plasma from blood donations is fractionated into such derivatives as Intravenous Immune Globulin, Factor VIII, and Albumin which are used to treat hemophilia patients, patients with a range of serious debilitating immune deficiencies, and patients with other serious conditions such as malnutrition, burns and major injury. It is not an exaggeration to

say that blood donations help save the lives of hundreds of thousands of patients each year and allow medical treatments not possible without blood transfusion.

The blood supply continues to be tenuous, at best. In 2001, 12.8 percent of hospitals reported delaying elective surgery (Comprehensive Report on Blood Collection and Transfusion in the United States in 2001 from the National Blood Data Resource Center, Bethesda, MD). AABB member facilities were on blood appeal for at least part of the past summer, and as the upcoming holiday and influenza season approaches, potential donors become less available due to such factors as personal travel or illness making additional urgent appeals likely.

The adequacy and maintenance of the blood supply has been the subject of intense scrutiny within the highest levels of the Federal Government. For example, the September 5, 2002, meeting of the Health and Human Services (HHS) Advisory Committee on Blood Safety and Availability was dedicated to the availability and monitoring of the blood supply.<sup>1</sup> Members of the blood banking community provided their latest data and suggestions for supporting blood availability. The Committee was made aware, once again, of the uncertainties of the blood supply and the critical need for sufficient numbers of volunteer donors.

The Committee's resolutions, which were forwarded directly to the Secretary of HHS included recommendations that HHS:

- Promote increased public awareness of the ongoing need for blood donation;
- Fund research on education and other approaches to encouraging donation; and
- Support efforts to monitor the blood supply.

We urge the FCC to consider the impact of their proposals on the care of patients. The FCC may inadvertently *restrict* the ability to solicit blood donations at the same time that another part of the Federal Government, HHS, is actively pursuing policies to *encourage* blood donation -- two diametrically opposed policies.

### Donor Solicitation Practices

Blood centers throughout the nation maintain blood donor lists that are used to contact donors. For example, it is routine to call and remind donors that they are eligible to donate, and to identify and contact donors with a specific blood type that are needed to meet special needs. Telemarketing is an essential recruitment tool and is reported by one of our largest member blood centers to account for approximately 40 percent of platelet collections and 12 percent of whole blood collections. The blood centers are very sensitive to donor requests that they not be contacted in this manner, and will remove that donor's name from future recruitment lists, or include information that specifically addresses donor preferences such as the need to contact the donor at a work telephone or after a certain time, or to contact them through regular mail or email. ***Any donor, at any time, and for any reason, may ask to be excluded from receiving calls.***

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<sup>1</sup> The full transcript of the September 5, 2002 meeting may be viewed at:  
<http://www.hhs.gov/bloodsafety/transcripts/20020905.html>.

A requirement to monitor and track a nationwide or statewide do-not call list is unnecessary. A national- or state-run do-not-call list offers donors one option – to be removed from the list and never be contacted for a blood donation again, **regardless of any blood shortages or immediate blood needs.** In almost all cases, donors prefer to be offered options that meet their privacy needs while supporting the needs of hospital patients.

## Comments

The AABB wishes to make the following points:

- It is far more cost-effective to use telecommunications technologies to reach out to potential blood donors than to conduct individual solicitations.
- The blood community is attempting to meet the increasing health care needs of an aging population with tighter budgets and lower insurance reimbursement levels than ever. The additional effort to verify records of a do-not-call registry will add an extremely severe cost burden not only to our members but also to the patients they serve.
- There are already a number of Food and Drug Administration regulations regarding donor recruitment and advertising and promotional labeling of blood products. These regulations help avert many of the abuses that led to proposals for the do-not-call registry and help define appropriate donor recruitment practices.
- If the FCC does not exempt blood and tissue telerecruitment, this rule will cause a public health crisis by threatening the adequacy of the blood supply in the United States.

## Conclusion

<b>The AABB requests that the FCC recognize the critical need for human blood and tissue as part of the health care system, and ensure its regulatory requirements do not impede efforts to contact donors.</b>	
Recommendation #1	The AABB urges FCC to clarify that restriction on telephone solicitations or technologies will not pertain to human blood and tissue donor recruitment.
Recommendation #2	The AABB urges clarification that solicitations for donations of human blood, tissue or related biologic materials, including those by for-profit vendors on the behalf of non-profit organizations, will be exempt from any “do-not-call” list requirements.

On behalf of the American Association of Blood Banks, thank you for the opportunity to comment on the proposed rule. We hope these comments are constructive as you consider further

rulemaking. If you have any questions, please contact Kay Gregory, Director, Regulatory Affairs, AABB, at (910) 842-2790.

Sincerely,

Roger Y. Dodd, PhD  
President